THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Court's order whether the case is or not approved for reporting

(Chapter VIII, Rule 32(2) (b))

Description of Case

WPMB No. 377 of 2003. decided on 28-5-03.

Km. Neetika Gupta

Vs.

Director of Medical Education & Ors.

A.F.R. (Approved for reporting)

Not ~~approved for reporting~~

Date 28-5-03 Initials of Judge

Note :- Bench Reader will attach this at the top of the first page of the judgment when it is put up before the Judge for signature.

RESERVED

Writ Petition No. 377 (M/B) of 2003.

Km. Neetika Gupta …… Petitioner

Versus

The Director of Medical Education,
Lucknow and others. …….. Respondents.

…….

Hon'ble P.C.Verma, A.C.J.
Hon'ble Irshad Hussain,J.

(Delivered by Hon'ble P.C.Verma,A.C.J.)

By means of this writ petition the petitioner has prayer for issuance of a writ, order of direction in the nature of certiorari quashing the order dated 10.04.2003, contained in Annexure No.10 to the writ petition, passed by the Director General, Medical Education & Training, Uttar Pradesh, Lucknow cancelling the admission of the petitioner in M.B.B.S. course in King George Medical College, Lucknow with a further prayer to issue a writ in the nature of mandamus commanding the respondents to let the petitioner continue the study in M.B.B.S, course in King George Medical College, Lucknow.

The facts and circumstances under which the impugned order cancelling the admission of the petitioner was passed are that under the Xth schedule to U.P. Reorganisation Act 2000, 55 seats were allotted for admission in various medical colleges of Uttar Pradesh to the residents of Uttaranchal. The Bundelkhund University, Jhansi was entrusted to conduct the entrance examination for 55 seats allotted to Uttaranchal in various medical colleges of Uttar Pradesh.

An advertisement was made inviting the applications for entrance examination and a brochure was also published alongwith entrance examination form by the University.

According to the brochure, which is contained in Annexure No.6 to the writ petition, out of 55 seats, 33 seats were allotted to M.B.B.S. course in various medical colleges, 3 seats for B.D.S. course, 15 seats for B.H.M.S. course and 4 seats for B.U.M.S. course. Reservation in admission was given to the reserved category candidates, in which 19% seats were reserved for Scheduled Caste candidates, 4% were reserved to Scheduled Tribes candidates, 14% were reserved to Other Backward Classes candidates and 2% for dependents of freedom fighters.

Brochure for Uttaranchal Combined Pre-Medical Test-2002, contained in Annexure No. 6 to the writ petition, provides eligibility of the candidates. Clause (a) of Part II of aforesaid brochure, which is in Hindi, provides that a candidate must be citizen of India and bonafide resident of Uttaranchal. According to the brochure, bonafide residents are those who have permanent home in Uttaranchal. This shall also include such residents of Uttaranchal who have been residing for 15 years or who have permanent home in Uttaranchal but have been residing out side the State for their livelihood. The persons having permanent home would mean such persons who have been residing in Uttaranchal through their descends and have their ancestral home in Uttaranchal. Alongwith the brochure certificate for permanent residence was provided.

The petitioner obtained a certificate of Sub Divisional Magistrate, Haldwani, District-Nainital on 06.9.2002 on the prescribed proforma, contained in Annexure No.4 at page 39 of the writ petition. The certificate so obtained by the petitioner which is in Hindi is reproduced below in English:-

"Certificate No.1
(Permanent residence Certificate)

Certified that **Km. Neetika Gupta** Daughter of **Sri Ram Kishor Gupta** resident of village / Mohalla / Ward **Parvatiya Mohalla,** Tehsil **Haldwani,** District **Nainital** is permanent resident of Uttaranchal.

It is also certified that before issuing the aforesaid certificate all the prescribed conditions have been carefully examined and I am fully satisfied with the same.

Sd. (illegible)
06.9.02
Sub Divisional Magistrate
Haldwani (Nainital)

On the basis of permanent certificate No.548 dated 14.6.2001.

Note: 1. Definition of original resident of Uttaranchal.

(a) Must be citizen of India and bonafide residents of State of Uttaranchal and further provided that bonafide residents means those persons who have permanent home in Uttaranchal and shall also include such residents of Uttaranchal who have been residing for 15 years or who have permanent home in Uttaranchal but have been residing out side the State for their livelihood. The persons having permanent home would mean such persons who have been residing in Uttaranchal through their descends/ have their ancestral home in Uttaranchal.

(b) As an exception to the conditions prescribed in point No.(a) in special matters such persons shall also be deemed as bonafide residents of Uttaranchal who have been in employment in permanent capacity under the State Government/ Semi Government Institutions. The persons employed in permanent capacity in Uttaranchal of Central Government or undertakings and whose services are non transferable outside the Uttaranchal, shall also be included in this category. For this purpose sufficient evidence shall have to be made available by the applicant".

The certificate as quoted above was obtained by the petitioner on the basis of certificate of permanent residence issued to her bearing No.548 dated 14.6.2001. The certificate of permanent residence dated 14.06.2001 was issued under the joint signatures of S.D.M., Haldwani and Tehsildar Nainital for District Magistrate, Nainital. The said certificate contained as Annexure No.2 to the writ petition which is in Hindi is being reproduced below in English:-

"Permanent Residence Certificate

Certificate No. **548/**97 Typist Dated **14.6.2001**

On the basis of report of Tehsildar/Land Record Inspector dated **14.6.2001** certified that **Km.Neetika Gupta** D/o **Sri Ram Kishor Gupta,** resident of **Parvatiya Mohalla,** is permanent resident of Tehsil Haldwani, District-Nainital.

Dated **14.6.2001**

Sd. (illegible)
14.6.01
Tehsildar
Haldwani (Nainital)

Sd. (illegible)

Deputy Collector
Haldwani
For District Magistrate
Nainital".

The entrance examination was conducted by the Bundelkhund University on 15.07.2002 in which the petitioner appeared on the basis of aforesaid certificate of permanent residence dated 06.09.2002 which was issued on the basis of certificate No. 548 dated 14.6.2001. The result was declared placing the petitioner at serial No.1 in O.B.C. list women category and VIIIth rank in general category as stated by the petitioner in Para 16 of the writ petition. After the counselling the petitioner was given admission in Chhatrapati Shahu Ji Maharaj Medical University earlier known as King George Medical College, Lucknow and the petitioner started studying the course of M.B.B.S. from October 2002 and continued till the cancellation of her admission by the impugned order.

One Sri Zahin Iliyas Ahmad S/o Sri Iliyas Ahmad made a complaint on 16.11.2002 that the petitioner is a permanent resident of Bareilly where she completed her education upto Intermediate. Her family resides at Bareilly. So the certificate issued to her on 14.06.2001 was illegal. He also filed a writ petition bearing writ petition No. 885 of 2002 before this Court in December 2002 praying the following relief:-

(a) "Issue a writ order or direction in the nature of mandamus directing the respondent to conduct an enquiry about the Uttaranchal domicile of those who are depriving the bonafide domicile of Uttaranchal to M.B.B.S. courses in various categories in various Medical College of Uttar Pradesh.

(b) Issue a writ order or direction in the nature of mandamus to directing the respondent admit the petitioner for M.B.B.S. course either as a General Candidates or under the O.B.C. category at any of the state Medical Colleges of Uttar Pradesh for Uttaranchal domiciles notified in the brochure (Annexure No.1).
(c) Issue a writ order or direction in the nature of certiorari quashing the notification dated 23.11.2002 and 11.12.2002 (annexure IXA and IX B) to the petition.
(d) Issue any other writ order or direction which this Hon'ble Court may deem fit in the circumstances of the case.
(e) Award cost of the petition".

In the aforesaid writ petition notices were issued to all the respondent including the petitioner. After the issuance of notice the State of Uttaranchal, vide its letter dated 04.12.2002 bearing No. 1762/Medical-1-02-89/2002 ordered an inquiry into the matter and directed the District Magistrates, Nainital and Bareilly to inquire about the permanent residence of the petitioner and to report. The District Magistrate, Nainital got the matter inquired by the S.D.M./Deputy Collector Haldwani and submitted his report on the basis of inquiry held by the S.D.M., Haldwani that Km.Neetika Gupta is not a permanent resident of Uttaranchal and certificate was obtained by her on the basis of misrepresentation.

The District Magistrate, Bareilly got the matter inquired through Tehsildar, Bareilly and A.D.M. Bareilly submitted a report on behalf of District Magistrate, Bareilly that the petitioner is permanent resident of District Bareilly which is contained in Annexure No.9 to the writ petition at page 94 of the paper-book. It has been mentioned in the report of A.D.M. Bareilly that on the basis of inquiry held by the Tehsildar dated 18.12.2002 Ram Kishor Gupta, father of petitioner was found to be the permanent resident of Bareilly. His mother was in service in Haldwani. Ram Kishor Gupta purchased the house in which they were residing on rent. He resides permanently in Haldwani. Ram Kishor Gupta has a house at 4 Ashapuram, Delapeer, Stadium Road, Bareilly. Km. Neetika Gupta D/o Ram Kishor Gupta is permanent resident of Bareilly and is **'Teli'** by caste under the O.B.C. category.

The A.D.M., Bareilly reported that the father of the petitioner is permanent resident of Haldwani and the petitioner is permanent resident of Bareilly.

On the report of the District Magistrate, Bareilly and the District Magistrate Nainital, the Additional Secretary, State of Uttaranchal, vide his letter dated 1762/Medical-1-2002-89/2002, dated 01.12.2002 informed the Director General, Medical Education and Training Uttar Pradesh that the certificate of permanent residence of Uttaranchal was obtained by the petitioner Km.Neetika Gupta D/o Ram Kishor Gupta by misrepresentation. Therefore, she was not eligible for admission against the seats reserved for the candidates who are permanent residents of Uttaranchal. As such the impugned order was passed.

During the course of hearing we summoned the entire record from the State of Uttaranchal and also required the Commissioner, Kumaon Division to submit his report on the permanent residence status of the petitioner. The Commissioner, Kumaon Division submitted his report dated 12.05.2003, which was taken on record.

Sri L.P.Naithani, learned counsel for the petitioner contended that the impugned order of cancellation of admission of the petitioner was passed in violation of principles of natural justice as the petitioner has not been given further opportunity by the Director General, Medical Education and Training U.P. The petitioner at no stage has seen the report of the District Magistrate, Bareilly and recommendation of the District Magistrate, Nainital and she was not informed that on which ground the admission of the petitioner was cancelled. He further contended that the petitioner has been residing in Haldwani since 1978 and has a permanent house much before the petitioner sought admission in Medical College. The petitioner is permanent resident of State of Uttaranchal according to the G.O. dated 20.11.2001 as the petitioner was born at Haldwani. The petitioner studied in Pant Nagar University both

Agriculture and Veterinary courses. The report of the Additional District Magistrate, Bareilly sent on his behalf by the District Magistrate has been ignored in which it has been reported that the petitioner is permanent resident of Haldwani.

Learned counsel for the petitioner further contended that the petitioner's grand father Nathu Ram settled at Haldwani, District Nainital about 42 years back and he was doing business of selling ice and the petitioner's mother Smt. Simla Devi was midwife in the Welfare Health Centre and they lived at Haldwani since the time grandfather shifted there. The petitioner's father started dry-cleaning shop business in the name "Shyama Dry Cleaner" opposite Nanak Sweet House at Haldwani in the year 1980. The petitioner's father was a tenant of 9/17 Parvatiya Mohalla, Bareilly Road Haldwani since 1978 and ultimately he purchased the house by sale deed in 2001. The name of the father of the petitioner has also been mutated. The father of the petitioner has paid house-tax. The grand father of the petitioner died in Haldwani in the year 1985. The requirement of bonafide residence in a State is fulfilled in view of the law laid down by the Apex Court in ***Yogesh Bhardwaj versus State of U.P., reported in 1990 (3) S.C.C.,page 355.***

The learned Additional Advocate General Sri U.K.Uniyal on the basis of the report of the Commissioner, which is also based on record, submitted that a perusal of the Government order dated 20.11.2001 shows that such certificate shall only be issued to those persons who are Indian citizens and bonafide residents of Uttaranchal. In the matter of petitioner this is an admitted fact that she has neither been residing in Uttaranchal for 15 years, as admittedly she has had her education in Bareilly with her parents nor she had any permanent home in Haldwani i.e. in the State of Uttaranchal at the point of submitting application for the certificate in question. The petitioner further can not claim the

permanent residence status through her parents as she herself did not reside in Uttaranchal with her parents as admittedly she stayed with her parents and has had her education in Bareilly only nor did she have any ancestral house at the point of time i.e. at the time of seeking certificate for permanent residence in the State of Uttaranchal. This is further not denied that in the year 1999 a certificate relating to the caste was issued to the petitioner by the Tehsildar Bareilly wherein she has been shown to be a resident of '**153, Kasgaraan, Bareilly'.**

Learned Addl. Advocate General further submitted that the claim of the father of the petitioner that he had been residing in Haldwani for last 23 years in House No.9/17, Parvatiya Mohalla, Bareilly Road, Haldwani stands belied in view of the report submitted by the Executive Officer, Nagarpalika, Haldwani, which states that in the house in question one Smt. Gomti Devi (land-lady) wife of Sri Tikam Das has been residing since 1986-87 and no tenancy of any person has been recorded in the referred house in the Nagarpalika records. The petitioner's claim for the grant of permanent residence certificate stands rejected in view of the fact that neither she has a permanent home in Uttaranchal nor she resided with her parents at Haldwani and further that as she had her education in Bareilly only. He further submitted that the contention of the father of the petitioner in his reply to the S.D.M., when the latter was conducting the enquiry that the house in which he was allegedly living for the last 23 years has since been purchased by him, is false as per the records. The father of the petitioner only has purchased a room with an area of 15 Sq. meters in the said building that too in December 2001. It is apparently an effect to substantiate his claim of having a permanent home in Uttaranchal. The copy of the Ration card given to the S.D.M. was issued only in the year 1999, which does not support the claim of petitioner of an extended or longer stay.

Before dealing with the rival contentions of the learned counsel for the petitioner and respondents we may examine as to whether the conditions of eligibility contained in the brochure and conditions for grant of permanent residence certificate contained in the brochure are mandatory or directory.

The Apex Court in **Kumari Chitra Ghosh and another versus Union of India and others, reported in 1969 (2) Supreme Court Cases, 228 in para-9** has held as under:-

> "It is the Central Government which bears the financial burden of running the medical college. It is for it to lay down the criteria for eligibility. From the very nature of things it is not possible to throw the admission open to students from all over the country. The Government cannot be denied the right to decide from what sources the admission will be made. That essentially is a question of policy and depends *inter alia* on an overall assessment and survey of the requirements of residents of particular territories and other categories of persons for whom it is necessary to provide facilities for medical education. If the sources are properly classified whether on territorial, geographical or other reasonable basis it is not for the courts to interfere with the manner and method of making the classification."

The Apex Court in **Km.Manju and another versus State, reported in A.I.R. 1972, Himachal Pradesh, 37** held that the rules laid down in prospectus has force of law. Paras 12 & 13 of the report are reproduced as under:-

> "12. Right of admission to an educational institution, run either by the State or by a State aided institution, is considered sufficiently important to be classified as a fundamental right in Article 29 (2) of our Constitution. We may also refer here to the term 'State' as used in Art. 12 for the purposes of Part III of the Constitution, which would include, for the purposes of enforcing fundamental rights, institutions such as medical colleges run by the State which do not have legally separate entities. The rules made by such a college or on its behalf, by the State Government would be law. Law, as defined by Art. 12 "includes any ordinance, order, bye-law, rule, regulation, notification, custom or usage having in the territory of India the force of law."

> 13. We, therefore, conclude that we are justified in treating the rules laid down in the prospectus as having the force of law governing the rights of applicants for admission, the power and obligations of the college its Selection Board, and the Government, in dealing with the cases of the petitioners for admission which we now proceed to examine."

After the forty-second amendment entry 11 of list II was deleted and the subject education, including technical education, medical education and universities was inserted in entry 25 of the concurrent list i.e. list II of the VIIth schedule of the Constitution of India, which reads as under:-

> "[25. Education, including technical education, medical education and universities, subject to the provisions of entries 63,64, 65 and 66 of List I; vocational and technical training of labour.]"

Thus, the Parliament as well as the State legislatures are competent to legislate on the topics enumerated in entry 25, list III which contains medical education. So far as the State legislation on the topic it will be subject to provisions of entries 63,64,65 and 66 of list I. The State legislation has to be in accordance with the provisions of Article 254 of the Constitution of India.

Both the Government i.e. Government of India and State Government are free to regulate the admission in the medical courses by executive orders in exercise of its power under Articles 73 and 162 of the Constitution. The law made by the Parliament shall prevail over the law made by the State legislature subject to the Article 254 of the Constitution. Likewise if the executive order is issued by the Government of India in absence of any law made by the Parliament, that will prevail over the executive order issued by the State Government in exercise of its power under Article 162 of the Constitution. Neither any law has been made by the Parliament nor any Government order has been issued by the Government of India regulating the admission in medical colleges. Field is unoccupied. The State Government in its executive power can issue Government order.

Therefore, the conditions contained in the brochure providing for eligibility of a candidate that he must be citizen of India and bonafide resident of State of Uttaranchal and further providing that bonafide resident must be citizen of India and must be bonafide resident of that State or area based on the G.O. dated 20.11.2001 of the State Government are statutory in nature.

The Apex Court upheld the reservation based on residence requirement for a period of not less than ten years, for admission in Medical Colleges in the State of Mysore in decision of **Kumari N.Vasundara versus the State of Mysore and another, reported in** 1971 (2) Supreme Court Cases, page 22 which reads as under:-

> *"……The object of framing the impugned rule seems to be to attempt to impart medical education to the best talent available out of the class of persons who are likely, so far as it can reasonably be foreseen, to serve as doctors, the inhabitants of the State of Mysore. ……..*
>
> *The State has therefore to formulate with reasonable foresight a just scheme of classification for imparting medical education to the available candidates which would serve the object and purpose of providing broad-based medical aid to the people of the State and to provide medical education to those who are best suited for such education.……..*
>
> *The counter-affidavit filed by the State on the other hand discloses the purpose to be that of serving the interests of the residents of the State by providing medical aid for them".*

In **Dr. Pradeep Jain and others versus Union of India and others, reported in (1984) 3 Supreme Court Cases 654** after referring all the above judgments (Supra) held as under:-

> "The claim of State interest in providing adequate medical service to the people of the State by imparting medical education to students who by reason of their residence in the State would be likely to settle down and serve the people of the State as doctors has thus been regarded by the Court as a legitimate ground for laying down residence requirement for admission to medical colleges in the State'.

We have extracted above the translated form of these conditions in English. Originally it is published in Hindi. We have used word “must be” in our translation as in Hindi word “Aavashyak hai” have been used. Use of word “must be” in the condition has a reason that after the enforcement of U.P. Reorganisation Act 2000 the State of Uttaranchal came into being and the seats for admission in the Medical Colleges were to be allocated by the State of Uttar Pradesh for the residents of State of Uttaranchal as per the provisions under the Xth schedule of U.P. Reorganisation Act 2000. Accordingly, 55 seats were ear-marked and allocated for residents of Uttaranchal. Therefore, these seats could only be filled by those candidates who are bona fide residents of Uttaranchal.

The use of word “Aavashyak hai/must be” itself makes these conditions mandatory in view of the law laid down by the Apex Court in **Lachmi Narain versus Union of India, reported in A.I.R. 1976 SC 714 at page 726,** in which the Apex Court has held as under:-

> ***“It will also be sufficient to hold the provision mandatory and it will not be necessary to pursue the inquiry any further”.***

As we have quoted above the certificate issued to the petitioner on 06.9.2002, contained in Annexure No.4, page 39 of the paper-book was issued on the basis of certificate issued on 14.6.2001, contained in Annexure No. 2 to the writ petition. The certificate dated 14.6.2001 was issued in terms of the Government Order dated 27th January 2000 which was issued by the existing State of Uttar Pradesh prior to the enforcement of U.P. Reorganisation Act, 2000 and was in force by virtue of Section 86 of the said Act within the meaning of law defined in Section 2(f) of U.P. Reorganisation Act, 2000. After issuance of Government Order dated 20.11.2001 and publication of brochure the conditions for admission and eligibility for entering in Combined Pre-Medical Test stood changed and Government Order dated 27.01.2000 stood superseded. Government Order dated 27.01.2000 does not contain the

conditions contained in Government Order dated 20.11.2001. Thus, the certificate issued on 14.6.2001 was not in conformity of the G.O. dated 20.11.2001.

Therefore, the certificate was obtained by the petitioner by misrepresentation and the officer was also equally at fault who issued the certificate without verifying the conditions laid down in the brochure. The petitioner could not get admission on the basis of this certificate which was not issued as per conditions contained in G.O. dated 20.11.2001 and in brochure published for admission in medical colleges which was mandatory for issuing the certificate of bonafide resident. The object for upholding the reservation in admission in medical colleges on the basis of bonafide residents have been found reasonable by the Apex Court in Yogesh Bhardwaj; Kumari Chitra Ghosh; Km.Manju; Kumari N.Vasundara and Dr.Pradeep Jain's cases (supra).

In the case of **Km. Madhuri Patil and another versus Addl. Commissioner, Tribal Development and others, reported in (1994) 6 Supreme Court Cases, 241,** the Apex Court up held the cancellation of admission of Km. Suchita Laxman Patil in medical college wherein she obtained caste certificate by fraud and misrepresentation.

The learned senior Advocate Sri L.P.Naithani appearing for the petitioner did not challenge the conditions of the brochure and the G.O. dated 20.11.2001, contained in Annexure No.11 to the writ petition. He submitted that since the grand father of the petitioner was residing in Haldwani, her father also resided in Haldwani since 1978 in house No.9/17 Parvatiya Mohalla, Bareilly Road, Haldwani (District-Nainital) and has purchased the house by sale deed dated 19.12.2001, the petitioner is bonafide resident of Uttaranchal. He contended that the petitioner's grand father Nathu Ram settled at Haldwani, District Nainital about 42 years back and he was doing business of selling ice and the petitioner's

mother Smt.Simla Devi was midwife in the Welfare Health Centre and they lived at Haldwani since the time grandfather shifted there. He heavily relied on the report of the Additional District Magistrate, Bareilly who reported on behalf of District Magistrate,Bareilly, contained in Annexure No.9 to the writ petition that father of the petitioner is permanent resident of Haldwani. The petitioner has not disclosed as to when she was admitted in the said course at Pant Nagar.

The learned Additional Advocate General Sri U.K.Uniyal explained eligibility and the conditions contained in the brochure for issue of the permanent residence certificate and submitted that this is not the father of the petitioner who is bonafide resident of Uttaranchal. This is the candidate who must be bonafide resident of Uttaranchal. Sri Uniyal invited our attention to the report of the A.D.M.Bareilly, contained in Annexure No.9 to the writ petition, in which it has been said that the father of the petitioner is bona fide resident of Haldwani and the petitioner is bonafide resident of Bareilly. He submitted that the petitioner took her entire education in District Bareilly except Agriculture and Veterinary courses in Pant Nagar University.

Learned counsel for the petitioner next submitted that before passing of the order for cancellation of admission no opportunity was given to the petitioner. On the other hand, the Additional Advocate General submitted that the opportunity was given to the petitioner during the course of inquiry report which relate to the cancellation of admission of the petitioner as has been admitted by the petitioner that show cause notice was given to her by S.D.M., Haldwani which is contained in Annexure No.7 to the writ petition and Tehsildar Bareilly which is stated in para 25 of the writ petition.

The cancellation order was passed n the basis of inquiry held on the complaint of Zahin Iliyas Ahmad and after filing the writ petition, which was numbered as 885 of 2002, and issue of notice by this High

Court. Inquiry was ordered by the State Government through the Collectors, Nainital and Bareilly. In turn the Collector, Bareilly and Collector, Nainital deputed the inquiry to be held by Tehsildar Bareilly and S.D.M., Haldwani respectively. The petitioner has annexed show cause notice issued by the S.D.M.,Haldwani in response to which she filed her reply and her father also appeared. The Tehsildar Bareilly has also issued notice to the petitioner in response to which her father appeared before the Tehsildar. After receipt of the reply of the petitioner submitted on her behalf by her father to Tehsildar Bareilly and S.D.M., Haldwani these two officers submitted their reports respectively to their District Magistrates. The District Magistrate, Bareilly has reported that the father of the petitioner is permanent resident of Haldwani and the petitioner is permanent resident of Bareilly. The District Magistrate, Nainital submitted his report alongwith inquiry report of the S.D.M., Haldwani. The S.D.M. in his report stated that Km.Neetika Gupta (petitioner) alongwith her family does not reside in 9/17 Parvatiya Mohalla, Haldwani and in the building in question Smt.Gomti Devi wife of Sri Teekam Singh (landlady) resides. It is also clear from the report of Executive Officer,Nagarpalika Haldwani dated 06.03.2002 that in the building in question since 1986-87 Smt.Gomti Devi wife of Teekam Das has been residing. It is also clear from the certificate of Class-XII issued by CBSE, New Delhi that Km. Neetika Gupta passed here above examination from Girish Prasad Memorial College, Bareilly. Km.Neetika Gupta also did not file any documentary evidence which shows that she and her parents acquired any immovable property even during the inquiry and before the year 2001 in Haldwani. It is also clear from the caste certificate issued by the Tehsildar Bareilly on 24.12.1999 to Km.Neetika Gupta that she is resident of 153, Kasgaraan, Bareilly, U.P.

Relying on the aforesaid material which was sent by the Additional Secretary, Government of Uttaranchal to the Director General, Medical Education & Training, U.P., the Director General above cancelled the

admission of the petitioner by the impugned order. Therefore, in our opinion the opportunity was given to the petitioner prior to the cancellation of admission of the petitioner.

Accordingly, we hold that there was full compliance of principles of natural justice in the proceedings on the basis of which the cancellation order was passed.

We have examined the facts in the light of the aforesaid submissions and we find that the petitioner has not stated anywhere in the writ petition that she has been residing from last 15 years in Haldwani. Contrary to it the evidence on record shows that the petitioner has completed her education upto Intermediate in Bareilly from house No.153,Kasgaraan, Bareilly of which the father of the petitioner is owner. Therefore, in terms of the condition of the eligibility and the condition for grant of certificate of permanent residence and in terms of Government Order the petitioner has not acquired the status of bonafide resident in State of Uttaranchal. The statement made in the writ petition and the evidence filed in support of those statements are in respect of the father of the petitioner and there is no evidence on record to show that the petitioner has been residing from last 15 years in the State of Uttaranchal. Therefore, we hold that the certificate issued to the petitioner was not a genuine certificate and was obtained by misrepresentation.

Learned counsel for the petitioner relied on the judgment in ***Yogesh Bhardwaj versus State of U.P. and others, reported in (1990) 3 Supreme Court Cases, 355*** wherein the Supreme Court was considering sub-clause (b) of Clause 4 of the Notification dated August 19,1983 issued under Section 26(5) of the U.P.State Universities Act, 1974 for the purposes of bonafide residence issued by the State of U.P. for the purposes of admission in the M.B.B.S. and B.D.S. courses. Clause 4 of the said notification reads as under:-

"4. For the purposes of this order the expression 'bona fide resident of Uttar Pradesh' shall mean-

(a) a citizen of India, the domicile of whose father is in Uttar Pradesh and who himself is domiciled in Uttar Pradesh; or

(b) a citizen of India, the domicile of whose father was not in Uttar Pradesh but who himself has resided in Uttar Pradesh for not less than five years at the time of making the application."

The Supreme Court in the said judgment in Para 22 held as under:-

"Clause 2, which we have set out above, refers to a 'bona fide resident and such a person is defined under clause 4 to include a person who has resided in Uttar Pradesh for not less than five years at the time of making his application. **These two clauses indicate that a person should have resided in Uttar Pradesh for the requisite period lawfully and bona fide. The converse of bona fide being mala fide, meaning lack of good faith, in the absence of any allegation that the application's residence in that State was in any manner opposed to the law of the land, or tainted by lack of good faith, and in the light of the undisputed fact that his residence was neither casual nor fleeting, but in excess of the minimum period of five years, and for the definite, purpose of education, he satisfies the definition of a 'bona fide resident'.** Any other construction of the clauses would, in our view, be unreasonably restrictive and thus conflict with the appellant's constitutional rights."

The facts in the case in hand are distinct from the facts of the case of Yogesh Bharwaj case. In that case the petitioner resided for five years therefore, the Court held that requirement of sub-clause (b) of clause 4 of the notification was fulfilled.

In the case in hand, there is no evidence on record to show that petitioner has resided in State of Uttaranchal for 15 years as required by the condition No.(a) given in the proforma for Permanent residence certificate, contained in Annexure No.4, page No.39 of the paper-book of the writ petition and Government Order dated 20.11.2001, contained in Annexure No.11 to the writ petition. Therefore, the petitioner even applying ratio of aforesaid judgment cannot be held to be bonafide resident of Uttaranchal.

For the reasons recorded above, the petition is devoid of merits and is hereby dismissed.

However, it is made clear that the cancellation of admission of petitioner on the ground of misrepresentation will not be a hurdle or will not be taken to be a stigma on her future career.

(Irshad Hussain,J.) **(P.C.Verma, A.C.J.)**

28.05.2003
P,Singh